

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WARREN C. HAVENS)	
)	
Applications to Provide Automated Maritime)	File Nos. 852997-853009
Telecommunications System Stations at Various)	
Locations in Texas, and)	
)	
Applications to Provide Automated Maritime)	File Nos. 853010-853014
Telecommunications System Stations at Chaffee,)	
Aspen, Colorado Springs, Copper Mountain, and)	
Leadville, Colorado)	

THIRD ORDER ON RECONSIDERATION

Adopted: July 21, 2011

Released: July 22, 2011

By the Commission:

I. INTRODUCTION

1. In this order – the fourteenth order issued by the Commission or the staff concerning the above-captioned license applications filed by Warren C. Havens – we dismiss as frivolous and repetitive Havens’ latest petition for reconsideration concerning this matter.¹ We also conclude that Havens has abused the Commission’s processes in this proceeding and, accordingly, propose that we should prohibit Havens (or any person or entity acting on behalf of Havens) from filing further pleadings with respect to the license applications at issue without the prior approval of the Wireless Telecommunications Bureau. As described below, we afford Havens an opportunity to comment on this proposed sanction before it takes effect.

II. BACKGROUND

2. This proceeding began more than a decade ago when Havens filed the above-captioned Automated Maritime Telecommunications System (AMTS) license applications to provide service in Colorado (Arkansas River) and Texas.² The staff dismissed those applications in 2000 and 2001 because

¹ Petition for Reconsideration of Warren C. Havens and related parties AMTS Consortium LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus VPC LLC, and Skybridge Spectrum Foundation (filed Apr. 5, 2010). Two days later, Havens and the related parties contingently asked the Commission to place their petition for reconsideration in abeyance for a limited period of time. See “Motion to Hold in Abeyance Petition for Reconsideration Filed April 5, 2010” (“Motion”) (filed Apr. 7, 2010). The Motion recounts that Havens and the related parties – in which Havens states he holds a “majority interest,” see Motion at 1 – “are willing to enter into a settlement between themselves,” *id.* at 2, under which Havens in his individual capacity would forego pursuing the above-captioned license applications if certain conditions were met. One of those conditions is that the Commission “grant[]” their Motion “by the end of year 2010.” *Id.* That condition was not satisfied. Thus, the April 7, 2010, Motion to Hold in Abeyance expired by its own terms and we dismiss it as moot.

² The background is set out more thoroughly in *Applications of Warren C. Havens to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Memorandum Opinion and Order, 23 FCC Rcd 3210, 3210-12 ¶¶ 2-5 (2008) (“2008 MO&O”), (continued....)

they did not meet the coverage requirements in Section 80.475(a) of the Commission's rules, as then in effect.³ Havens filed petitions for reconsideration that the staff denied in 2001,⁴ a petition for further reconsideration regarding the Colorado applications that the staff denied in 2001,⁵ applications for review that the Commission denied in 2002,⁶ and appeals to the United States Court of Appeals for the District of Columbia Circuit that the Court administratively terminated in 2007.⁷

3. After the Commission adopted geographic licensing for AMTS and eliminated the site-based coverage requirements in Section 80.475(a) in the *AMTS Fifth Report and Order*,⁸ Havens requested that the dismissed applications be processed pursuant to the new geographic coverage rules and requested forbearance from the site-based coverage requirements. This precipitated yet another round of staff and Commission orders. The staff denied his requests in 2004.⁹ Havens then filed a petition for reconsideration that the staff dismissed on procedural grounds in 2005 because it was untimely filed.¹⁰

4. The staff's 2005 dismissal of his untimely petition for reconsideration underlies the current dispute. Specifically, in March 2005, Havens filed a petition seeking reconsideration of the 2005

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and *Applications of Warren C. Havens to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Order, 19 FCC Rcd 23196, 23196-99 ¶¶ 2-8 (WTB PSCID 2004) ("PSCID Order").

³ See *Applications of Warren C. Havens for Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Order, 15 FCC Rcd 22296 (WTB PSPWD 2000); *Applications of Warren C. Havens for Automated Maritime Telecommunications System Stations at Various Locations in Texas*, Order, 16 FCC Rcd 2539 (WTB PSPWD 2001). Specifically, applicants proposing to serve a waterway less than 150 miles in length had to serve the entire waterway, and applicants proposing to serve a longer waterway had to provide continuity of service along at least sixty percent of it. See 47 C.F.R. § 80.475(a) (1999).

⁴ See *Applications of Warren C. Havens for Automated Maritime Telecommunications System Stations at Various Locations in Texas*, Order on Reconsideration, 16 FCC Rcd 18046 (WTB PSPWD 2001); *Applications of Warren C. Havens for Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Order on Reconsideration, 16 FCC Rcd 9337 (WTB PSPWD 2001).

⁵ See *Applications of Warren C. Havens for Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Order on Further Reconsideration, 16 FCC Rcd 19240 (WTB 2001).

⁶ See *Applications of Warren C. Havens for Authorization to Operate Automated Maritime Telecommunications System Stations at Various Locations in Texas*, Memorandum Opinion and Order, 17 FCC Rcd 17588 (2002); *Applications of Warren C. Havens for Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Memorandum Opinion and Order, 17 FCC Rcd 17527 (2002).

⁷ *Havens v. FCC*, Nos. 02-1315, 02-1316 (D.C. Cir. filed Oct. 16, 2002). The D.C. Circuit Court of Appeals initially held these cases in abeyance at Havens' request for five years, but administratively terminated these cases on June 7, 2007.

⁸ See *Amendment of the Commission's Rules Concerning Maritime Communications*, Second Memorandum Opinion and Order and Fifth Report and Order, 17 FCC Rcd 6685, 6702-03 ¶ 37 (2002), *recon. granted in part and denied in part*, Third Memorandum Opinion and Order, 18 FCC Rcd 24391 (2003) ("*AMTS Fifth Report and Order*").

⁹ See *PSCID Order*, 19 FCC Rcd at 23199-201 ¶¶ 9-13.

¹⁰ See *Applications for Warren C. Havens to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Order on Reconsideration, 20 FCC Rcd 3995, 3996-97 ¶ 6 (WTB PSCID 2005) ("*2005 Dismissal Order*").

Dismissal Order. The staff denied that reconsideration petition in 2006.¹¹ In 2008, the Commission denied his ensuing application for review.¹² Havens and related parties then petitioned for reconsideration of the 2008 decision, based on what they deemed to be relevant new information that Havens could not have learned prior to his last opportunity to present such matters.¹³ The Commission concluded, however, that the information was not relevant to the sole matter at issue – whether the petition for reconsideration was properly dismissed in 2005 as untimely filed – and therefore dismissed the 2008 reconsideration petition as repetitious.¹⁴ The Commission also emphasized that the above-captioned applications had been the subject of 12 orders at the staff and Commission levels, stated that the Commission planned to give no further consideration to the matter, and directed the staff to dismiss summarily any subsequent pleadings filed by Havens or related parties in this proceeding.¹⁵

5. Havens and related parties then petitioned for reconsideration of our 2010 decision, based on what they asserted was additional relevant information that Havens could not have timely learned. Consistent with the Commission's direction, the staff summarily dismissed the petition for reconsideration of our 2010 decision.¹⁶

6. Havens then sought reconsideration of the staff's *2010 Summary Dismissal Order*. This is the reconsideration petition that we now address below.

III. DISCUSSION

7. Section 1.106(b)(2) of the Commission's rules provides that a petition for reconsideration of the denial of an application for review will be entertained only if "(i) [t]he petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or (ii) [t]he petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts and circumstances in question prior to such opportunity."¹⁷ A petition that fails to introduce relevant new facts or changed circumstances may be dismissed as repetitious.¹⁸

¹¹ See *Applications for Warren C. Havens to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Order on Further Reconsideration, 21 FCC Rcd 3553, 3555 ¶ 5 (WTB 2006).

¹² See *2008 MO&O*, 23 FCC Rcd at 3212-13 ¶ 7.

¹³ Specifically, the responses to two Freedom of Information Act requests that Havens filed in 2007, which, according to Havens, demonstrated that the initial dismissals of the above-captioned applications were improper.

¹⁴ *Warren C. Havens Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Order on Reconsideration, 25 FCC Rcd 511, 513 ¶¶ 5-6 (2010) ("2010 Order on Reconsideration").

¹⁵ See *id.*, 25 FCC Rcd at 513 n.22.

¹⁶ *Warren C. Havens Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Order on Further Reconsideration, 25 FCC Rcd 2123, ¶ 1 (WTB MD 2010) ("2010 Summary Dismissal Order").

¹⁷ 47 C.F.R. § 1.106(b)(2).

¹⁸ See *Notices of Apparent Liability for Forfeitures of Emery Telephone*, Memorandum Opinion and Order, 15 FCC Rcd 7181, 7184 ¶ 5 (1999) (citing 47 C.F.R. § 1.106(b)(3)); see also, e.g., *Sagir, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15967, 15974 ¶ 16 (2003).

8. Havens, in his pending petition for reconsideration, contends that the staff's *2010 Summary Dismissal Order* was improper because "any new appeal that contains valid new facts must be considered under Section 1.106" of the Commission's rules.¹⁹ Havens' 2010 reconsideration petition, which led to the staff's *2010 Summary Dismissal Order*, relied on information pertaining to the character and fitness of certain other AMTS licensees.²⁰ Although it is not entirely clear, Havens seems to have asserted that the Commission treated him unfairly relative to other AMTS license holders, which he says entitles him to grant of the above-captioned AMTS licenses.²¹

9. As noted above, under Section 1.106(b)(2), a petition for reconsideration of an order denying an application for review must rely on new facts or circumstances. Such new facts or circumstances must also be relevant to the question before the Commission. While Havens' allegations arguably were new, they were irrelevant. As we previously explained, the sole issue before the Commission in 2006 was whether Havens' 2005 petition for reconsideration was properly dismissed by the staff on procedural grounds because it was untimely filed.²² Proceedings pertaining to *other* AMTS licensees shed no light on this question,²³ and constitute no grounds for the grant of Havens' unrelated applications.²⁴ Indeed, when faced with an earlier variation of Havens' discriminatory treatment argument, the staff explained that "to the extent that grant[] [of an] application" to another licensee "could have been erroneous," it would not "provide a basis for granting Havens'[] applications" in the instant proceeding.²⁵ As set forth above, Havens' petition for reconsideration contained no *relevant* new facts on the question whether his untimely 2005 petition for reconsideration was properly dismissed on procedural grounds. We therefore dismiss the instant petition, consistent with the reasoning in our prior orders.

10. In conclusion, Havens has presented no grounds for reconsideration of the summary dismissal of his petition for reconsideration. We therefore dismiss the instant petition for reconsideration as repetitious and frivolous.

¹⁹ Petition at 3.

²⁰ See Petition for Reconsideration Based on New Facts (filed Feb. 16, 2010).

²¹ See *id.* at 1-2.

²² See *2010 Order on Reconsideration*, 25 FCC Rcd at 513 ¶ 5.

²³ We already have held that Havens' allegations against other licensees elsewhere should be addressed in the relevant proceedings, and not in the context of unrelated matters. See, e.g., *Paging Systems, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 450, 453-54 ¶¶ 7-8 (2010) (stating that Havens' allegations against Paging Systems, Inc. (PSI) regarding PSI's AMTS licenses were appropriately addressed in proceedings involving those licenses, and not in ancillary proceedings), *recon. pending*; *Mobex Network Services, LLC, Applications to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Stations in Various Locations in the United States*, Memorandum Opinion and Order, 25 FCC Rcd 3390 (2010) (same, regarding Havens' allegations against Maritime Communications/Land Mobile LLC (MC/LM) regarding MC/LM's AMTS licenses), *recon. pending*.

²⁴ Havens does not contend that those other decisions were precedent that the Commission was bound to follow under the Administrative Procedure Act, see 5 U.S.C. § 553 *et seq.* Rather, Havens simply argues that the Commission treats him unfairly relative to other licensees. See Pet. at 7 ("Petitioners have increasingly demonstrated that it is the FCC which has acted repeatedly and wrongfully to shelter bogus licenses and licensees that have a long-standing history of flagrant violation of the Communications Act and FCC rules to compete unfairly with Petitioners.").

²⁵ Warren C. Havens, *Order on Reconsideration*, note 4, *supra*, 16 FCC Rcd at 18048 ¶ 5.

IV. PROPOSED SANCTIONS

11. A government agency may place restrictions on participation to prevent abuse of its processes,²⁶ and the Commission has authorized its staff to impose sanctions upon participants who engage in such abuses.²⁷ Given our concern for free participation in FCC proceedings, however, we only consider the possibility of such sanctions in egregious cases where the abusive nature of the pleadings is clear. We believe this is such a case. This agency has now issued 14 orders addressing the above-captioned applications,²⁸ but Havens has continued to press irrelevant and/or repetitious arguments, some of which we have previously rejected. As we explained in the *2010 Order on Reconsideration*, the sole issue before the Commission when it denied reconsideration of the *2005 Dismissal Order* was whether Havens' untimely petition for reconsideration was properly dismissed in 2005 as procedurally defective. Yet in each successive petition for reconsideration Havens has filed since the *2008 MO&O*, he has raised irrelevant arguments relating to other matters, such as the merits of the underlying applications. Those arguments shed no light on the relevant legal issue, which is whether Havens' petition for reconsideration was properly dismissed in 2005 as untimely filed. Moreover, as discussed above, Havens' allegations about other AMTS licensees – even if true – provide no basis for reconsidering the decisions to dismiss Havens' own AMTS applications in this proceeding. We therefore find that Havens' pleadings filed subsequent to our *2008 MO&O* are frivolous, in violation of rule 1.52,²⁹ because they are “based on arguments that have been specifically rejected by the Commission” or otherwise have “no plausible basis for relief.”³⁰

12. We gave Havens clear notice in the *2010 Order on Reconsideration* that the staff would summarily dismiss subsequent pleadings with respect to the above-captioned applications.³¹ Yet, Havens continues to file repetitious petitions for reconsideration. Responding to each subsequent petition for reconsideration takes limited Commission resources away from other non-frivolous matters. This undermines the public interest. We therefore tentatively conclude that Havens (or any person or entity acting on behalf of Havens) should obtain prior approval before filing any future pleadings involving the above-captioned license applications, consistent with judicial precedent³² and Commission practice.³³

13. We propose that any future motion, pleading, or other document submitted by Havens³⁴ to the Commission or to any member of the staff with respect to the above-captioned applications shall have a cover page attached to it clearly labeled “Request for Permission to File.” The request shall include the following statement: “Pursuant to previous findings by the FCC that Warren C. Havens has abused Commission processes, and requiring Havens to request permission of the Wireless Telecommunications Bureau to file further documents, Havens submits this request.” In seeking leave to

²⁶ *Radio Carrollton*, Memorandum Opinion and Order, 69 FCC 2d 1138, 1148-55 (1978).

²⁷ See *Commission Taking Tough Measures Against Frivolous Pleadings*, Public Notice, 11 FCC Rcd 3030 (1996) (“1996 Public Notice”).

²⁸ For ease of reference, the full citations to the fourteen orders are listed in the Appendix to this order.

²⁹ 47 C.F.R. § 1.52. A pleading may be deemed frivolous under section 1.52 of our rules if there is no “good ground to support it” or it is “interposed for delay.” *Id.*

³⁰ See 1996 Public Notice, citing *Implementation of Cable Television Consumer Protection Act*, 9 FCC Rcd 2642, 2657 (1993).

³¹ *2010 Order on Reconsideration*, 25 FCC Rcd at 513 n.22.

³² See, e.g., *Urban v. United Nations*, 768 F.2d 1497, 1500 (D.C. Cir. 1985); *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988).

³³ See *Alexander Broad. Co.*, Memorandum Opinion and Order, 13 FCC Rcd 10355, 10356, ¶ 5 (MMB 1998).

³⁴ This sanction would apply to filings submitted by and on behalf of Havens.

file, Havens must certify that the claim or claims he wishes to present are not frivolous or made in bad faith. The Wireless Telecommunications Bureau will deny permission to file abusive documents such as those that are frivolous, repetitive, irrelevant, obstructive, or that appear designed to cause harm in furtherance of a private interest. Failure to request permission to file as directed by the Commission will be deemed good and sufficient grounds for the Bureau to deny leave to file.

14. Although the proposed restrictions described in this order apply to the specific license application proceedings noted above, we emphasize that in the future we will not hesitate to take action in other proceedings when there are additional abusive or frivolous pleadings. Thus, to the extent we find in the future that Havens (or any person or entity acting on behalf of Havens) has violated rule 1.52 in other proceedings before the FCC, we may impose a similar prior approval sanction related to such pleadings. Further, we hereby specifically notify Havens (and his related companies that filed pleadings in this proceeding) that we may consider imposing other sanctions authorized by the Communications Act, including the issuance of monetary forfeitures, if he continues to file frivolous pleadings in this proceeding (or if he files frivolous pleadings in other proceedings) in violation of section 1.52 of our rules.³⁵

15. We recognize that requiring Havens to obtain our prior approval before filing any future pleadings with respect to these AMTS applications is a serious step, and one that we do not take lightly. We therefore afford Havens an opportunity to respond before we impose this sanction. No later than 30 days from release of this *Third Order on Reconsideration*, Havens may file with the Commission an opposition or other response to the proposed restrictions set forth herein. Absent further order, we will not entertain any additional filing from Havens regarding the proposed restrictions, including amendments or errata, however styled, outside this 30-day period. Havens should serve a courtesy paper copy of any such response on the Chief, Wireless Telecommunications Bureau and the General Counsel.

V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 5(c), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and 405(a), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by Warren C. Havens, AMTS Consortium LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus VPC LLC, and Skybridge Spectrum Foundation on April 5, 2010, IS DISMISSED.

17. IT IS FURTHER ORDERED that the "Motion to Hold in Abeyance Petition for Reconsideration Filed April 5, 2010," filed by Warren C. Havens and related parties AMTS Consortium LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus VPC LLC, and Skybridge Spectrum Foundation on April 7, 2010, IS DISMISSED AS MOOT.

18. IT IS FURTHER ORDERED that a copy of this order shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Warren C. Havens, 2649 Benvenue Avenue, # 2-6, Berkeley, CA 94704.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁵ See 1996 Public Notice, 47 U.S.C. § 503.

APPENDIX**Citations to FCC Orders
Involving Warren C. Havens' Applications
For AMTS Licenses**Colorado (Arkansas River) Licenses:

Applications of Warren C. Havens for Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado, Order, 15 FCC Rcd 22296 (WTB PSPWD 2000), *recon. denied*, 16 FCC Rcd 9337 (WTB PSPWD 2001), *further recon. denied*, 16 FCC Rcd 19240 (WTB 2001), *review denied*, 17 FCC Rcd 17527 (2002), *appeal docketed*, *Havens v. FCC*, No. 02-1315 (D.C. Cir. Oct. 16, 2002), *administratively terminated by court*, Order, No. 02-1315 (D.C. Cir. May 4, 2007).

Texas Licenses:

Applications of Warren C. Havens for Automated Maritime Telecommunications System Stations at Various Locations in Texas, Order, 16 FCC Rcd 2539 (WTB PSBWB 2001), *recon. denied*, 16 FCC Rcd 18046 (WTB PSPWD 2001), *review denied*, 17 FCC Rcd 17588 (2002), *appeal docketed*, *Havens v. FCC*, No. 02-1315 (D.C. Cir. Oct. 16, 2002), *administratively terminated by court*, Order, No. 02-1315 (D.C. Cir. May 4, 2007).

Request to Process Dismissed Licenses Under New Rules:

Applications of Warren C. Havens to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado, Order, 19 FCC Rcd 23196 (WTB PSCID 2004) ("PSCID Order"), *recon. dismissed*, 20 FCC Rcd 3995 (WTB PSCID 2005) ("2005 Dismissal Order"), *further recon. denied*, 21 FCC Rcd 3553 (WTB 2006), *review denied*, 23 FCC Rcd 3210 (2008) ("2008 MO&O"), *recon. dismissed*, 25 FCC Rcd 511 (2010) ("2010 Order on Reconsideration"), *further recon. summarily dismissed*, 25 FCC Rcd 2123 (WTB MD 2010) ("2010 Summary Dismissal Order").